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12 and all others similarly situated

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF ALAMEDA**

16 CHRISTIAN MATUTE, an individual;
17 Individually and on Behalf of All Similarly
18 Situated Individuals,

19 Plaintiff,

20 v.

21 PILOT AIR FREIGHT LLC dba PILOT
22 FREIGHT SERVICES, a Pennsylvania Limited
23 Liability Company; BEST BUY CO., INC., a
24 Minnesota Corporation; and DOES 1 through
25 25, Inclusive,

26 Defendants.

ENDORSED
FILED
ALAMEDA COUNTY

SEP 23 2021

CLERK OF THE SUPERIOR COURT
By Jamie Thomas
JAMIE THOMAS, Deputy

Case No.

RG21113609

CLASS ACTION

1. FAILURE TO PAY MINIMUM WAGE;
2. FAILURE TO PAY OVERTIME
COMPENSATION;
3. REIMBURSEMENT OF EMPLOYMENT
EXPENSES;
4. UNLAWFUL DEDUCTION FROM
WAGES;
5. FAILURE TO PROVIDE MEAL
PERIODS;
6. FAILURE TO AUTHORIZE AND PERMIT
REST PERIODS;
7. FAILURE TO FURNISH ACCURATE
WAGE STATEMENTS;
8. WAITING TIME PENALTIES; AND
9. UNFAIR COMPETITION

JURY TRIAL DEMANDED

1 Plaintiff CHRISTIAN MATUTE (“Plaintiff”), individually and on behalf of all similarly
2 situated individuals, allege as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants PILOT AIR FREIGHT, LLC dba
5 PILOT FREIGHT SERVICES; BEST BUY CO. INC.; and DOES 1 through 25, inclusive
6 (collectively, “Defendants”), on behalf of Plaintiff and all other non-employee workers who worked
7 in California as a Contract Carrier, Driver, and/or Helper (hereinafter collectively referred to as
8 “Delivery Drivers”) for Defendants at any time from March 28, 2017¹, and continuing while this
9 action is pending (“Class Period”), who were denied the benefits and protections required under the
10 California Labor Code and other statutes and regulations applicable to California employees.

11 2. During the Class Period, Defendants:

- 12 a. unlawfully misclassified Delivery Drivers as independent contractors;
- 13 b. failed to pay wages for all hours worked by Delivery Drivers;
- 14 c. failed to pay Delivery Drivers the applicable legal minimum wage;
- 15 d. failed to pay overtime wages due to Delivery Drivers;
- 16 e. failed to provide meal and rest periods due to Delivery Drivers;
- 17 f. failed to provide the Delivery Drivers with timely and accurate wage and hour
18 statements;
- 19 g. failed to pay the Delivery Drivers compensation in a timely manner upon their
20 termination or resignation;
- 21 h. failed to maintain complete and accurate payroll records for the Delivery Drivers;
- 22 i. wrongfully withheld wages and compensation due to the Delivery Drivers; and
- 23 j. committed unfair business practices in an effort to increase profits and to gain an unfair
24 business advantage at the expense of the Delivery Drivers and the public.

25 3. The foregoing acts and other acts by Defendants - committed throughout California and Los
26

27 _____
28 ¹ Pursuant to California Emergency Rule of Court 9, the statute of limitations for this matter was
tolled beginning on April 6, 2020 and, continued to October 1, 2020, for a period of 178 days.

1 Angeles County - violated provisions of the California Labor Code, including sections 201, 202, 203,
2 204, 226, 226.7, 226.8, 246, 510, 512, 515, 551, 552, 558, 1194, and 1198 (collectively, “Employment
3 Laws”), violated the applicable Wage Orders issued by California’s Industrial Welfare Commission,
4 including Wage Orders 9-2001 during the Class Period (“Regulations”), violated California’s Unfair
5 Business Practices Act, California Business & Professions Code sections 17200 *et seq.*, and violated
6 Plaintiff’s rights.

7 **JURISDICTION AND VENUE**

8 4. Venue is proper in this Judicial District and the County of Alameda because work was
9 performed by Plaintiff and other members of the Class for Defendants in the County of Alameda,
10 California, and Defendants’ obligations under the Employment Laws and Regulations to pay
11 overtime wages, to provide meal and rest periods and accurate wage statements to Plaintiff and other
12 members of the Class arose and were breached in California, including the County of Alameda.

13 5. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of
14 California, and Defendants are corporations qualified to do business in California and regularly
15 conduct business in California. Further, no federal question is at issue as the claims are based solely
16 on California law.

17 **THE PARTIES**

18 6. Plaintiff CHRISTIAN MATUTE is, and at all relevant times was, a competent adult
19 residing in California. CHRISTIAN MATUTE brings suit on behalf of himself and all similarly
20 situated individuals pursuant California Code of Civil Procedure section 382, and California Business
21 & Professions Code sections 17200, *et seq.* CHRISTIAN MATUTE was unlawfully classified by
22 Defendants Pilot Air Freight LLC dba Pilot Freight Service, and Best Buy Co., Inc. as an independent
23 contractor and worked as a Driver out of the warehouse owned and operated by Best Buy Co., Inc. in
24 San Leandro, California, from approximately November 2019 to on or about February 2021.

25 7. Defendant PILOT AIR FREIGHT, LLC is, and at all relevant times was, a Minnesota
26 limited liability company licensed to do business and actually doing business in the State of
27 California. Pilot provides logistics and delivery services to its retail merchants like Best Buy, and
28 others, to deliver product and services to their clients’ customers. Pilot utilizes Delivery Drivers to

1 pick up the merchandise at the merchants' stores or warehouses and to deliver and install them at the
2 customers' homes or businesses. Pilot is therefore a provider of managed transportation services
3 including the planning and execution for "last mile" delivery of its retail merchant clients. Pilot has
4 engaged in unlawful employment practices addressed in this Complaint throughout California and in
5 Alameda County.

6 8. Defendant BEST BUY CO., INC. is, and at all relevant times was, a Pennsylvania limited
7 liability company licensed to do business and actually doing business in the State of California. Best
8 Buy is a retail merchant that utilizes Pilot, a provider of managed transportation services, to complete
9 the planning and execution of "last mile" delivery for its customers. Best Buy, through Pilot, utilizes
10 Delivery Drivers to pick up merchandise at Best Buy's stores or warehouses and to deliver and install
11 them at the customers' homes or businesses. Plaintiff asserts claims against BEST BUY CO., INC.
12 in its capacity as Client Employer through Labor Code § 2810.3. Best Buy has engaged in unlawful
13 employment practices addressed in this Complaint throughout California and in Alameda County.

14 9. Plaintiff is informed and believes and based thereon alleges that Defendants uniformly apply
15 their pay practices, and overtime policies to all Drivers and Driver Assistants. Plaintiff is currently
16 unaware of the true names and capacities of the defendants sued in this action by the fictitious names
17 DOES 1 through 25, inclusive, and therefore sue those defendants by such fictitious names.

18 10. Plaintiff will amend this Complaint to allege the true names and capacities of such
19 fictitiously named defendants when they are ascertained.

20 11. Plaintiff is informed and believes and based thereon alleges that each defendant sued in this
21 action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive, is
22 responsible in some manner for the occurrences, controversies and damages alleged below.

23 12. Plaintiff is informed and believes and based thereon alleges that DOES 1 through 25,
24 inclusive were the agents, servants and/or employees of Defendants and, in doing the things
25 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
26 servants and employees, and with the permission and consent of Defendants.

27 13. Plaintiff is informed and believes and based thereon alleges that Defendants ratified,
28 authorized, and consented to each and all of the acts and conduct of each other as alleged herein.

1 14. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of
2 them, were their employer under California law, that Defendants did acts consistent with the
3 existence of an employer-employee relationship with Plaintiff despite their unlawful classification
4 of Plaintiff as independent contractor.

5 **FACTS COMMON TO ALL CAUSES OF ACTION**

6 15. Defendants unlawfully classified Plaintiff and other similarly situated individuals as
7 independent contractors when, in fact, they were heavily regulated through a series of work-related
8 restrictions and directives through Defendants.

9 16. Best Buy retained Pilot for delivery services. Specifically, Pilot secures truck owners and
10 contracts with such truck owners for purposes of delivering, installing, and picking up of merchandise
11 and products to Pilot's clients' customers, like Best Buy. These truck owners go to the warehouses
12 of Pilot's clients and go through a hiring process with Pilot's and Best Buy's employees who are
13 officed at the same site. Truck owners are hired by Pilot and Best Buy. Truck owners then bring on
14 drivers and driver assistants who are also evaluated by Pilot and Best Buy for hiring purposes.
15 Delivery Drivers provide "last mile" delivery, installation, and haul away services.

16 17. Upon information and belief, Pilot enters into written agreements with Delivery Drivers
17 which provide that the Delivery Drivers are independent contractors. Pilot's Pre-Qualification Packet
18 with Delivery Drivers requires that Delivery Drivers subject themselves to a background check and
19 drug and alcohol test, and that Pilot reserves the right to "require both pre-engagement and post-
20 engagement alcohol and drug tests of all its Contract Carriers." The agreements are contracts of
21 adhesion that are drafted exclusively by Pilot and/or on its behalf by its agents, like Best Buy. The
22 terms of the agreements are non-negotiable. Through this agreement, Pilot and Best Buy reserve and
23 actually exercises the right to control the manner and means by which the Delivery Drivers perform
24 their duties.

25 18. Pilot has a series of directives that Delivery Drivers must abide by despite the fact that Pilot
26 unlawfully classifies them as independent contractors. Pilot reserves the right to determine the
27 locations where the Delivery Drivers pick up and drop off the merchandise assigned to them; the time
28 of day when they must report to work; and the order and timing of their deliveries. Pilot provides

1 each Delivery Driver a daily manifest of work assignments that includes the delivery address, the
2 “service window” time when the delivery must be made, and whether the Delivery Driver is required
3 to call the customer 30 minutes ahead of arrival to give notice of when he will make the delivery. The
4 Delivery Drivers must complete all of the work assigned to them and are not allowed to refuse
5 assignments. Pilot and Best Buy reserve the right to control the Delivery Drivers’ physical
6 appearance, including requiring them to wear Pilot uniforms. Pilot also reserves the right to require
7 the Delivery Drivers to know and follow Pilot’s customer service standards in performing their work,
8 and conduct surveys to determine whether customers are satisfied with the Delivery Drivers’ work.

9 19. Pilot further reserves the right to require the Delivery Drivers to follow certain work
10 methods related to, for example, how to move and install the appliances and how to interact with
11 customers. Pilot determines the year, branding, and other specifications of the vehicles that the
12 Delivery Drivers use to perform their work. Pilot prescribes how the Delivery Drivers document their
13 work and require the Delivery Drivers to contact Pilot upon arrival at each stop and then again after
14 the delivery is completed. Pilot and Best Buy also reserve the right to require the Delivery Drivers
15 to call each customer 30 minutes before making the delivery to let the customers know they are on
16 their way. Pilot and Best Buy also employ a variety of managerial and supervisory employees who
17 instruct the Delivery Drivers on their job performance and their delivery assignments. The Delivery
18 Drivers interact with Pilot and Best Buy’s personnel on a daily basis. Pilot and Best Buy’s managerial
19 and supervisory employees also hold regular in-person and/or telephonic meetings where the
20 Delivery Drivers’ attendance is mandatory.

21 20. The Delivery Drivers are paid each week by Pilot a flat amount for each delivery, or for
22 each day or week of work, in amounts that are unilaterally determined by Pilot. Pilot makes
23 deductions from the Delivery Drivers’ pay for reasons including customer complaints, late deliveries,
24 and damaged items and property. This “flat rate” constitutes an unlawful piece-rate compensation
25 system because Delivery Drivers had no control over how many hours they worked and could do
26 nothing to change the amount of pay through their own efficiencies.

27 21. Upon information and belief, Pilot and Best Buy require the Delivery Drivers to purchase
28

1 multiple forms of insurance coverage in amounts determined by Pilot through insurance plans
2 specified and sometimes negotiated by Pilot, and to name Pilot and Best Buy as additional “insureds.”
3 Pilot further requires the Delivery Drivers to purchase or rent from Pilot and Best Buy, certain tools
4 and equipment.

5 22. Pilot directs Delivery Drivers to engage helpers to deliver the assigned merchandise. Pilot
6 prohibits the Delivery Drivers from working with helpers who have not been screened, qualified, and
7 approved in advance by Pilot and Best Buy. Pilot expects helpers to follow the same work methods
8 and standards it requires the Delivery Drivers to follow and to comply with all other requirements
9 communicated by Pilot and Best Buy, including attendance at meetings held by Pilot management
10 and/or Best Buy.

11 23. Pilot permits Delivery Drivers to engage other Drivers and/or Helpers at their own expense
12 who have been screened, qualified, and approved by Pilot and Best Buy. Delivery Drivers may
13 engage such Drivers and/or Helpers so that they are able to take a day off from work, such as for
14 example when they are unable to come to work due to illness or so that they may have a day of rest.
15 Pilot expects Drivers and/or Helpers to follow the same work methods and standards it requires the
16 Delivery Drivers to follow and to comply with all other requirements communicated by Pilot and
17 Best Buy, including following instructions given by Pilot and Best Buy managers and attending
18 mandatory meetings.

19 24. The Delivery Drivers are economically dependent for their financial livelihood on Pilot, and
20 Pilot is entirely dependent on the Delivery Drivers for the retail merchandise delivery service
21 provided by Pilot to its clients, like Best Buy. The Delivery Drivers are terminable at will. They may
22 be terminated upon fifteen- or thirty-days written notice without cause or immediately for alleged
23 breaches of the broadly worded standards and obligations described in the agreement, or arbitrarily.

24 25. Most of the Delivery Drivers have worked, or did work, for Pilot for several years. Despite
25 Pilot’s pervasive control over all aspects of its delivery service operation, including the details of the
26 Delivery Drivers’ work, Pilot has classified and treated the Delivery Drivers as “independent
27 contractors.” Pilot’s classification and treatment of the Delivery Drivers as “independent contractors”
28 rather than as “employees” is and during all relevant times has been unlawful.

1 **CLASS ACTION ALLEGATIONS**

2 26. Plaintiff brings these claims as a class action pursuant to Code of Civil Procedure § 382 and
3 Business and Professions Code §§ 17203 & 17204. Plaintiff brings this action on Plaintiff's own
4 behalf and on behalf of the following class of individuals (the "Class" or "Class Members"):

5 All current and former individuals who performed delivery services for Defendants
6 as Contract Carriers, Drivers, and/or Helpers in the State of California from March
7 28, 2017 and continuing while this action is pending.

8 27. All Delivery Drivers, i.e., Contract Carriers, Drivers, and Helpers, including Plaintiff, are
9 putative class members.

10 28. During the Class Period, by virtue of unlawfully classifying Plaintiff and Class Members as
11 independent contractors and compensating Class Members with a "flat rate" Defendants have
12 routinely failed to compensate Delivery Drivers all of the wages they are due ("off-the-clock" work).

13 29. During the Class Period, Plaintiff and Delivery Drivers were subject to Defendants'
14 Unlawful company practice of classifying them as independent contractors and paying them a daily
15 flat sum of money when in fact they were subjected to the pervasive control of Defendants. All who
16 were subject to this unlawful classification and compensation scheme suffered damages. Defendants
17 applied this illegal wage device uniformly to all Delivery Drivers to the disadvantage of Class
18 Members.

19 30. As a result, during the Class Period, Defendants have failed to provide Drivers and Helpers
20 with accurate wage and hour statements since the daily "flat rate" did not fully compensate Delivery
21 Drivers for all hours worked. Defendants have failed to provide Delivery Drivers with accurate wage
22 and hour statements since the gross hours earned, total hours worked, all deductions made, net wages
23 earned, and all applicable hourly rates in effect during each pay period and the corresponding number
24 of hours worked at each hourly rate.

25 31. During the Class Period, Plaintiff and Delivery Drivers have been required to work more
26 than eight hours per day and more than forty hours per workweek. Defendants have routinely failed
27 to compensate Delivery Drivers all of the overtime wages they are due.

28 ////

1 32. During the Class Period, Defendants have failed to pay accrued wages and other
2 compensation due immediately to Delivery Drivers who were terminated, and Defendants have failed
3 to pay accrued wages and other compensation due within seventy-two hours to Delivery Drivers who
4 ended their employment.

5 33. The proposed class is ascertainable in that its members can be identified using information
6 contained in Defendants' payroll and personnel records.

7 34. Numerosity. The Delivery Drivers are so numerous, conservatively estimated to include
8 over 40 Delivery Drivers, that joinder of each individual Class Member would be impracticable, and
9 the disposition of their claims in a class action, rather than numerous individual actions, will benefit
10 the parties, the Court, and the interests of justice.

11 35. Commonality. There is a well-defined community of interest in the questions of law and
12 fact involved in this action because Defendants' failure to pay Delivery Drivers their wages or afford
13 them the protections required under the Employment Laws and Regulations affects all Class
14 Members. Common questions of law and fact predominate over questions that affect only individual
15 Delivery Drivers, because all Delivery Drivers were subject to the uniform, unlawful pay practices
16 and policies. The predominate questions of law and fact include, but are not limited to:

- 17 a. Whether Defendants devised a scheme and/or plan to circumvent California
18 wage and hour laws;
- 19 b. Whether Defendants' conduct was fraudulent and/or deceitful;
- 20 c. Whether Defendants' conduct violated the Employment Laws and
21 Regulations; and
 - 22 (i) failed to compensate Plaintiff and the Class Members
23 for all hours worked;
 - 24 (ii) failed to compensate Plaintiff and the Class Members at the
25 applicable and legally-mandated minimum hourly rate then in
26 effect;
 - 27 (iii) failed to provide Plaintiff and the Class Members with timely
28 and accurate wage and hour statements; and

(iv) failed to maintain complete and accurate payroll records for Plaintiff and the Class Members;

d. Whether Defendants' systematic acts and practices violate, *inter alia*, California Business & Professions Code section 17200, *et seq.*

36. Typicality. Plaintiff's claims are typical of those of the other Delivery Drivers because all Delivery Drivers share the same or similar employment duties and activities, all are automatically classified as independent contractors, and all have been denied the benefits and protections of the Employment Laws and Regulations in the same manner. Since Defendants have uniformly applied the same pay practices and policies to each Delivery Driver, Plaintiff's claims are typical of the claims of all Delivery Drivers. Plaintiff's claims are also typical because Plaintiff has suffered the same damages as those suffered by all Class Members.

37. Adequacy of Representation. Plaintiff can fairly and adequately represent and protect the interests of all Delivery Drivers in that Plaintiff does not have disabling conflicts of interest which are antagonistic to those of all other Delivery Drivers. Plaintiff seeks no relief which is antagonistic or adverse to the other Class Members, and the infringement of their rights and the damages they have suffered are typical of all other Class Members. Plaintiff's counsel is competent and experienced in litigating class actions in California based on large employers' violations of the Employment Laws and Regulations.

38. As mentioned above, to the extent that any Delivery Drivers entered into any arbitration agreement with any Defendant and such agreement purports to require arbitration, such agreement is void and unenforceable. Even if such agreement is deemed enforceable, however, class-wide arbitration is appropriate and should be utilized to obtain class-wide relief.

39. Superiority of Class Action. The nature of this action and the nature of laws available to Plaintiff and the other Delivery Drivers in the putative Class make use of the class action a particularly efficient and effective procedure because:

a. For many of the Delivery Drivers, individual actions or other individual remedies would be impracticable and litigating individual actions would be too costly;

- 1 b. The action involves a large corporate employer or employers (Pilot and Best
2 Buy) and a large number of individual employees (Plaintiff and the other Class
3 Members), many with relatively small claims and all with common issues of
4 law and fact;
- 5 c. If the Delivery Drivers are forced to bring individual lawsuits, the
6 corporate defendants would necessarily gain an unfair advantage, the
7 ability to exploit and overwhelm the limited resources of individual
8 Class Members with vastly superior financial and legal resources;
- 9 d. The costs of individual suits would likely consume the amounts
10 recovered;
- 11 e. Requiring each Class Member to pursue an individual remedy would
12 also discourage the assertion of lawful claims by current employees
13 of Defendants, who would be disinclined to pursue an action against
14 their present and/or former employer due to an appreciable and
15 justified fear of retaliation and permanent damage to their immediate
16 and/or future employment; and
- 17 f. Common business practices Plaintiff experienced are representative of those
18 experienced by all Delivery Drivers and can establish the right of all Delivery
19 Drivers to recover on the alleged claims.

20 **FIRST CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGE**

22 **(CAL. LABOR CODE §§ 1182.11, 1194 ET SEQ.; IWC WAGE ORDER NO. 9;**
23 **MINIMUM WAGE ORDER)**

24 40. The allegations of each of the preceding paragraphs are realleged and incorporated
25 herein by reference, and Plaintiff alleges as follows a claim of relief.

26 41. At all times relevant to this complaint, Cal. Labor Code §§ 1182.11, 1182.12, and 1197,

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1 IWC wage order No. 9, and the Minimum Wage Order were in full force and effect and required that
2 Defendant's California nonexempt employees receive the minimum wage for all hours worked
3 irrespective of whether nominally paid on an hourly, piece rate, or any other basis, at the rate of
4 ten dollars (\$10) per hour for work performed up through January 1, 2017, ten dollars and fifty cents
5 (\$10.50) per hour for work performance up through January 1, 2018, eleven dollars (\$11) per hour
6 for work performed up through January 1, 2019, twelve dollars (\$12) per hour for work performed
7 up through January 1, 2020, and thirteen dollars (\$13) per hour for work performed thereafter.

8 42. Defendants failed to pay Plaintiff and putative class members for all hours worked at the
9 statutory minimum wage rate, as required by law, including for work time spent at mandatory
10 meetings; work time spent waiting to receive assignments and merchandise at Best Buy's stores or
11 warehouses; work time spent picking up and transporting "haul away" merchandise; and work time
12 spent returning paperwork to Best Buy's stores at the end of the workday.

13 43. At various times throughout the relevant statutory period, Defendants have caused Plaintiff
14 and putative class members to incur expenses and deductions that contributed to Defendants' failing
15 to pay minimum wages for all hours worked, as required by law.

16 44. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff and
17 putative class members have been deprived of minimum wages due in amounts to be determined at
18 trial, and to additional amounts as liquidated damages, pursuant to Cal. Labor Code §§ 1194 and
19 1194.2.

20 45. By violating Cal. Labor Code §§ 1182.11, 1182.12, and 1197, IWC wage order No. 9, § 4,
21 and the Minimum Wage Order, Defendants are also liable for civil penalties, interest and reasonable
22 attorneys' fees and costs under Cal. Labor Code §§ 558, 1194, 1197.1.

23 46. Plaintiff requests relief as described below.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME COMPENSATION**

26 **(CAL. LABOR CODE §§ 510, 1194 ET SEQ.; IWC WAGE ORDER NO. 9.)**

27 47. The allegations of each of the preceding paragraphs are realleged and incorporated herein
28 by reference, and Plaintiff alleges as follows a claim of relief.

1 48. Defendants have been required, pursuant to Cal. Labor Code § 510 and IWC wage order No.
2 9, § 3, to pay Plaintiff and putative class members overtime compensation at a rate of 1.5 times their
3 regular rates of pay for all hours worked in excess of eight in a day and in excess of 40 in a week,
4 and at a rate of two times their regular rates of pay for all hours worked in excess of 12 in a day.

5 49. Defendants failed to pay Plaintiff and putative class members daily or weekly overtime
6 compensation in violation of Cal. Labor Code § 510 and IWC wage order No. 9, § 3.

7 50. As a result of Defendants' unlawful acts, Plaintiff and putative class members have been
8 deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery
9 of such amounts, plus interest thereon, and attorneys' fees and costs, under Cal. Labor
10 Code § 1194.

11 51. By violating Cal. Labor Code § 510, Defendants are liable for civil penalties and attorneys'
12 fees and costs under Cal. Labor Code §§ 558, 1194, and 1197.1.

13 52. Plaintiff requests relief as described below.

14 **THIRD CAUSE OF ACTION**

15 **REIMBURSEMENT OF EMPLOYMENT EXPENSES**

16 **(CAL. LABOR CODE § 2802)**

17 53. The allegations of each of the preceding paragraphs are realleged and incorporated
18 herein by reference, and Plaintiff alleges as follows a claim of relief.

19 54. Cal. Labor Code § 2802 provides: "An employer shall indemnify his or her employee for all
20 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
21 his or her duties, or of his or her obedience to the directions of the employer . . . [which includes] all
22 reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the
23 rights granted by this section."

24 55. As a direct consequence of discharging their duties for Defendants and/or obeying
25 Defendants' directions, Plaintiff and putative class members have necessarily incurred expenses
26 for which they have not been indemnified by Pilot and Best Buy, including the purchase and/or lease
27 and depreciation of vehicles; fuel, maintenance, and other vehicle operating costs; various forms of
28 insurance; wages paid to Delivery Drivers; costs associated with lost or damaged merchandise and

1 other property damage; Pilot proprietary uniforms; certain tools and equipment Defendants have
2 required Plaintiff and class members to purchase or rent from Pilot and Best Buy; other miscellaneous
3 equipment including moving pads and blankets, dollies, hand tools, installation supplies, GPS
4 navigational equipment, and cellular telephones; fees for payroll administration services; expenses
5 associated with a cash bond or fund; and the attorneys' fees incurred to enforce Plaintiff's and putative
6 class members' rights under Cal. Labor Code § 2802.

7 56. Defendants have failed to indemnify or in any manner reimburse Plaintiff and putative
8 class members for these expenditures and losses.

9 57. By requiring Plaintiff and putative class members to pay expenses and cover losses that they
10 incurred in direct consequence of the discharge of their duties for Defendants and/or in obedience of
11 Defendants' direction, Defendants have violated and continues to violate Cal. Labor Code § 2802.

12 58. As a direct and proximate result of Defendants' conduct, Plaintiff and putative
13 class members have suffered substantial losses according to proof, as well as pre-judgment interest,
14 costs, and attorneys' fees for the prosecution of this action, which losses are compensable under
15 Cal. Labor Code §2802.

16 59. Plaintiff requests relief as described below.

17 **FOURTH CAUSE OF ACTION**

18 **UNLAWFUL DEDUCTIONS FROM WAGES**

19 **(CAL. LABOR CODE §§ 221 & 223; IWC WAGE ORDER NO. 9)**

20 60. The allegations of each of the preceding paragraphs are realleged and incorporated herein by
21 reference, and Plaintiff alleges as follows a claim of relief.

22 61. Cal. Labor Code § 221 provides: "It shall be unlawful for any employer to collect or receive
23 from an employee any part of wages theretofore paid by said employer to said employee."

24 62. Cal. Labor Code § 223 provides: "Where any statute or contract requires an employer to
25 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting
26 to pay the wage designated by statute or by contract."

27 63. IWC wage order No. 9, § 8 provides that the only circumstance under which an employer can
28 make a deduction from an employee's wage due to cash shortage, breakage, or loss of

1 equipment is if the employer can show that the shortage, breakage, or loss was the result of
2 the
3 employee's gross negligence or dishonest or willful act.

4 64. These and related statutes, along with California's fundamental public policy protecting
5 wages and wage scales, prohibit employers from subjecting employees to unanticipated or
6 unpredicted reductions in their wages; making employees the insurers of their employer's business
7 losses; otherwise passing the ordinary business losses of the employer onto the employee; taking
8 deductions from wages for business losses in any form unless the employer can establish that the loss
9 was caused by a dishonest or willful act, or gross negligence of the employee; or taking other
10 unpredictable deductions that may impose a special hardship on employees.

11 65. Defendants have violated Cal. Labor Code §§ 221 and 223 and IWC wage order No. 9, § 8
12 by unlawfully taking deductions from Plaintiff's and putative class members' compensation to
13 cover certain ordinary business expenses of Defendants, including various forms of insurance;
14 uniforms; payment services; equipment and tools; losses associated with lost or damaged
15 merchandise and other property damage; gift cards and other payments given or reimbursed to
16 customers who complain or are dissatisfied with service they received; and "charge-back" items
17 Defendants claim to reserve the right to deduct from Plaintiff's and putative class members' pay.

18 66. Defendants have further violated Cal. Labor Code §§ 221 and 223 and IWC wage order No.
19 9, § 8 by unlawfully taking deductions from Plaintiff's and putative class members' compensation
20 for the purpose of establishing a reserve account to draw upon to cover ordinary business expenses,
21 including compensation to customers complaining of damages to their merchandise or to their homes.

22 67. Because Defendants made unlawful deductions from Plaintiff's and putative class members'
23 compensation, they are liable to Plaintiff and putative class members for the compensation that should
24 have been paid but for the unlawful deductions, pursuant to Cal. Labor Code §§ 221 and 223 and
25 IWC wage order No. 9, § 8.

26 68. By unlawfully deducting wages and failing to pay Plaintiff and putative class members
27 Defendants are also liable for penalties, interest and reasonable attorneys' fees and costs
28 under Cal. Labor Code §§ 218.5 and 1194.

69. Plaintiff request reliefs as described below.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(CAL. LABOR CODE §§ 226.7, 512; IWC WAGE ORDER NO. 9)

70. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a claim of relief.

71. Plaintiff and putative class members have regularly worked in excess of five (5) hours in a workday without being provided at least a half-hour meal period in which they were relieved of all duties, as required by Cal. Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9, § 11(A).

72. Because Defendants failed to provide proper meal periods, they are liable to Plaintiff and putative class members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 9, § 11(B).

73. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, § 11, Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code §§ 218.5 and 1194.

74. Plaintiff requests relief as described below.

SIXTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

(CAL. LABOR CODE § 226.7; IWC WAGE ORDER NO. 9)

75. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a claim of relief.

76. Plaintiff and putative class members have regularly worked in excess of four (4) hours in a workday without Defendant's authorizing and permitting them to take at least a ten-minute rest period, as required by Cal. Labor Code § 226.7 and IWC wage order No. 9, § 12.

77. Because Defendants failed to authorize and permit proper rest periods, Defendants are liable to Plaintiff and putative class members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not authorized and permitted,

1 pursuant to Cal. Labor Code § 226.7(b) and IWC wage order No. 9, § 12(B).

2 78. By violating Cal. Labor Code §§ 226.7 and 512, and IWC wage order No. 9, §11,
3 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Cal. Labor Code
4 §§ 218.5 and 1194.

5 79. Plaintiff requests relief as described below.

6 **SEVENTH CAUSE OF ACTION**

7 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

8 **(CAL. LABOR CODE §§ 226, 226.3; IWC WAGE ORDER NO. 9)**

9 80. The allegations of each of the preceding paragraphs are realleged and incorporated herein by
10 reference, and Plaintiff alleges as follows a claim of relief.

11 81. Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B) require employers semi-
12 monthly or at the time of each payment of wages to furnish each California employee with a
13 statement itemizing, among other things, the total hours worked by the employee. Cal. Labor Code
14 § 226(b) provides that if an employer knowingly and intentionally fails to provide a statement
15 itemizing, among other things, the total hours worked by the employee, then the employee is
16 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation
17 and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

18 82. Defendants knowingly and intentionally failed to furnish Plaintiff and putative class
19 members with timely, itemized statements that accurately report the total hours worked, as required
20 by Cal. Labor Code § 226(a) and IWC wage order No. 9, § 7(B). As a result, Defendants are liable to
21 Plaintiff and putative class members for the amounts provided by Cal. Labor Code § 226(b), including
22 an award of costs and reasonable attorneys' fees.

23 83. Plaintiff requests relief as described below.

24 **EIGHTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES**

26 **(CAL. LABOR CODE §§ 201-203)**

27 84. As a separate and distinct cause of action, Plaintiff complains and realleges all the

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1 allegations contained in this complaint, and incorporate them by reference into this cause of action
2 as though fully set forth herein, excepting those allegations which are inconsistent with this cause of
3 action.

4 85. During the Class Period, Defendants failed to pay accrued wages and other compensation
5 due immediately to each putative class member who was terminated and failed to pay accrued
6 wages, including meal and rest period wages and other compensation due within seventy-two hours
7 to each putative class member who ended his or her employment.

8 86. As a consequence of Defendants' actions, putative class members are entitled to all
9 available statutory penalties, including those provided in California Labor Code section 203, as well
10 as all other available remedies.

11 **NINTH CAUSE OF ACTION**

12 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION ACT**

13 **(CAL. BUSINESS & PROFESSIONS CODE §§ 17200-17209)**

14 87. The allegations of each of the preceding paragraphs are realleged and incorporated herein by
15 reference, and Plaintiff alleges as follows a claim of relief.

16 88. California Business & Professions Code § 17200 prohibits unfair competition in the form of
17 any unlawful, unfair, or fraudulent business act or practice.

18 89. California Business & Professions Code § 17204 allows "any person acting for the interests
19 of itself, its members or the general public" to prosecute a civil action for violation of the Unfair
20 Competition Law.

21 90. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the filing of
22 this action, Defendants committed unlawful, unfair, and/or fraudulent business acts and practices as
23 defined by California Business & Professions Code § 17200, by engaging in the following:

- 24 a. Failing to pay California minimum wage and overtime compensation to
25 Plaintiff and putative class members;
- 26 b. Failing to provide adequate off-duty meal periods to Plaintiff and putative
27 class members, and failing to pay them premium pay for missed meal periods;
- 28 c. Failing to authorize and permit adequate rest periods to Plaintiff and

- 1 putative class members, and failing to pay them premium pay for missed rest periods;
- 2 d. Failing to indemnify Plaintiff and putative class members for employment-
- 3 related business expenses and losses;
- 4 e. Improperly and unlawfully making deductions from Plaintiff's and plaintiff
- 5 class members' compensation to cover certain ordinary business expenses and losses
- 6 of Defendants, which were not attributable to Plaintiff's and putative class members'
- 7 dishonest or willful act, or to their gross negligence, as described above;
- 8 f. Improperly and unlawfully demanding a cash bond from Plaintiff and
- 9 putative class members, and making deductions from such bonds in violation of the
- 10 Employee Bond Law, Cal. Labor Code §§ 400-410;
- 11 g. Coercing or compelling Plaintiff and putative class members to patronize Defendants'
- 12 clients, like Best Buy by requiring Delivery Drivers to purchase or rent certain tools
- 13 and equipment from Best Buy, in violation of Labor Code §450;
- 14 h. Failing to maintain workers' compensation insurance covering Plaintiff and
- 15 putative class members, requiring Plaintiff and putative class members to purchase
- 16 workers' compensation insurance for themselves, and failing to pay compensation to
- 17 Plaintiff and putative class members injured on the job;
- 18 i. Failing to contribute to the Unemployment Trust Fund on behalf of Plaintiff and
- 19 putative class members;
- 20 j. Failing to pay all wages due upon termination of employment to Plaintiff
- 21 and similarly situated putative class members no longer in Defendant's employ;
- 22 k. Failing to provide accurate itemized wage statements to Plaintiff and
- 23 putative class members;
- 24 l. Failing to keep accurate payroll records noting the actual hours worked by
- 25 Plaintiff and putative class members, in violation of Cal. Labor Code § 1174 and IWC
- 26 wage order No. 9, § 7(A);
- 27 m. Failing to pay all wages for labor performed between the 1st and 15th days of
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1 the month between the 16th and the 26th day of the month during which the labor was
2 performed, and failing to pay all wages for labor performed between the 16th and the
3 last day of the month between the 1st and 10th day of the following month, as required
4 by Cal. Labor Code § 204;

5 n. Willfully misclassifying Plaintiff and putative class members as
6 “independent contractors” in violation of the California Employee Misclassification
7 Act, Cal. Labor Code § 226.8;

8 o. Failing to provide Plaintiff and putative class members paid sick leave as required by
9 Cal. Labor Code § 246; and

10 P. Intentionally, recklessly and/or negligently misrepresenting to Plaintiff and
11 putative class members the true nature of their employment status.

12 91. The violations of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and
13 practices for purposes of Business & Professions Code § 17200.

14 92. As a direct and proximate result of Defendants’ unlawful, unfair, and/or fraudulent acts and
15 practices described herein, Defendants have received and continue to hold ill-gotten gains belonging
16 to Plaintiff and putative class members. As a direct and proximate result of Defendants’ unlawful
17 business practices, Plaintiff and putative class members have suffered economic injuries including,
18 but not limited to out-of-pocket business expenses, unlawful deductions from compensation, loss of
19 minimum wage and overtime wages, compensation for missed meal periods, compensation for
20 missed rest periods, loss of unemployment insurance benefits, loss of amounts paid into cash bonds
21 and interest thereon, waiting time penalties, and attorneys’ fees and costs incurred to enforce their
22 rights, including their rights under Cal. Labor Code § 2802. Defendants have profited from its
23 unlawful, unfair, and/or fraudulent acts and practices in the amount of those business expenses,
24 improper deductions from compensation, unpaid minimum wage and overtime, unpaid compensation
25 for missed meal periods and missed rest periods, unpaid unemployment insurance and workers’
26 compensation premiums, cash bond payments, and interest accrued.

27 93. Plaintiff and putative class members are entitled to restitution pursuant to Cal. Business &
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1 Professions Code §§ 17203 and 17208 for all unpaid business expenses, unlawful deductions from
2 compensation, minimum wage, overtime, meal period and rest period compensation, unemployment
3 insurance and workers' compensation premiums, cash bond payments, unpaid waiting time penalties,
4 interest since four years prior to the filing of this action, and attorney's fees and costs Plaintiff has
5 incurred to enforce these rights, including their rights under Cal. Labor Code § 2802.

6 94. Plaintiff and putative class members are entitled to enforce all applicable penalty provisions
7 of the California Labor Code pursuant to Business & Professions Code § 17202.

8 95. By all of the foregoing alleged conduct, Defendants have committed, and are continuing to
9 commit, ongoing unlawful, unfair and fraudulent business practices within the meaning of Cal.
10 Business & Professions Code §17200 *et seq.*

11 96. As a direct and proximate result of the unfair business practices described above, Plaintiff
12 and putative class members have suffered significant losses and Defendants have been unjustly
13 enriched.

14 97. Pursuant to Cal. Business & Prof. Code §17203, Plaintiff is entitled to: (a) restitution of
15 money acquired by means of its unfair business practices, in amounts not yet ascertained but to be
16 ascertained at trial; (b) injunctive relief against Defendants' continuation of unfair and unlawful
17 business practices; and (c) a declaration that Defendants' business practices are unfair and unlawful
18 within the meaning of the statute.

19 98. Plaintiff assumed the responsibility of enforcement of the laws and lawful claims specified
20 herein. There is a financial burden incurred in pursuing this action which is in the public interest.
21 Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil Procedure §
22 1021.5.

23 99. Plaintiff requests relief as described below.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all Delivery Drivers, prays that the
26 Court enter judgment in their favor and against Defendants as follows:

- 27 1. For an Order requiring and certifying this action as a class action;
- 28 2. For an Order appointing Plaintiff's counsel as Class Counsel;

- 1 3. For compensatory damages in an amount to be ascertained at trial;
2 4. For restitution in an amount to be ascertained at trial;
3 5. For punitive damages in an amount to be ascertained at trial;
4 6. For penalties as required by the applicable Wage Order or otherwise by law;
5 7. For prejudgment interest at the legal rate pursuant to California Labor Code section
6 218.6 and other applicable sections;
7 8. For reasonable attorney's fees pursuant to California Labor Code § 1194;
8 9. For cost of suit incurred herein;
9 10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to pay
10 overtime premium compensation and meal and rest period compensation; and
11 11. For such further relief as the Court may deem appropriate.

12 DATED: September 22, 2021

BOYAMIAN LAW, INC.

13
14 By: 
15 Michael H. Boyamian
16 Attorneys for Plaintiff CHRISTIAN
MATUTE and All Others Similarly Situated

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff CHRISTIAN MATUTE, individually and on behalf of all similarly situated
19 individuals, demand jury trial of this matter.

20 DATED: September 22, 2021

BOYAMIAN LAW, INC.

21 By: 
22 Michael H. Boyamian
23 Attorneys for Plaintiff CHRISTIAN
24 MATUTE and All Others Similarly Situated
25
26
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